

**Civil  
DOCKET**

DOCKET NUMBER

**200436CV000395****Trial Court of Massachusetts  
District Court Department**

## CASE NAME

**CLAIRE GAGNE vs. J.C. PENNEY COMPANY INC.**

## CURRENT COURT

Salem District Court  
65 Washington Street  
Salem, MA 01970-3572  
(978) 744-1167

## ASSOCIATED DOCKET NO.

DATE FILED

04/16/2004

DATE DISPOSED

07/21/2004

## PLAINTIFF(S)

P01 CLAIRE GAGNE  
15 HERITAGE DRIVE  
APT 31  
SALEM, MA 01970

## PLAINTIFF'S ATTORNEY

ELDON D. GOODHUE  
458 NEWBURYPORT TPKE., STE. 3  
TOPSFIELD, MA 01983  
(978) 887-2000

## DEFENDANT(S)/OTHER SINGLE PARTIES

D01 J.C. PENNEY COMPANY INC.  
6501 LEGACY DRIVE  
PLANO, TX

## DEFENDANT'S ATTORNEY

RICHARD R. EURICH  
250 SUMMER ST  
BOSTON, MA 02210  
(617) 439-7508

NO.	ENTRY DATE	DOCKET ENTRIES
1	04/16/2004	Complaint filed on 04/16/2004 at Salem District Court.
2	04/16/2004	Appearance for Claire Gagne filed by Attorney ELDON D. GOODHUE 458 Newburyport Tpke., Ste. 3 Topsfield MA 01983 BBO# 201520
3	04/16/2004	Filing fee of \$180.00 and surcharge of \$15.00 paid (G.L. c.262 §§ 2 & 4C).
4	04/16/2004	Statement of damages filed by P01 CLAIRE GAGNE (Dist./Mun.Cts.Supp.R.Civ.P. 102A).
5	04/16/2004	DISMISSAL UNDER STANDING ORDER 1-88 TIME STANDARDS potentially applicable on 04/29/2005 06:01 PM.
6	04/16/2004	DISMISSAL UNDER MASS.R.CIV.P. 4(j) potentially applicable on 07/30/2004 06:01 PM.
7	04/16/2004	ANNUAL CIVIL LITIGATION FEE DUE TO BE ASSESSED on 04/29/2005 06:01 PM.



A TRUE COPY,  
ATTEST:

CLERK-MAGISTRATE/ASST. CLERK

X

DATE

7/30/04

CLERK/MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

2004 JUL 14 P 11:51

SALEM DISTRICT COURT  
DOCKET NO: 0436CV395

\_\_\_\_\_  
CLAIRE GAGNE,  
Plaintiff,

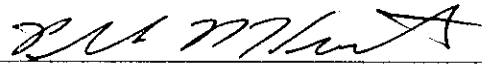
v.

\_\_\_\_\_  
J.C. PENNEY COMPANY, INC.,  
Defendant.  
\_\_\_\_\_

**NOTICE OF FILING OF NOTICE OF REMOVAL**

Please take notice that a Notice of Removal, a true and correct copy of which is attached hereto, was filed by the Defendant, J.C. Penney Company, Inc., in the office of the Clerk of the United States District Court for the District of Massachusetts, Eastern Division, One Courthouse Way, Boston, MA, on the 6th day of July, 2004, relative to the removal and transfer of the above-captioned action.

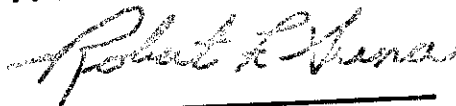
The Defendant,  
J.C. Penney Company, Inc.  
By their attorneys,



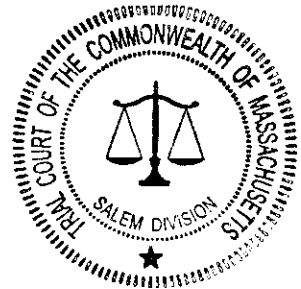
Richard R. Eurich, BBO #156600  
Philip M. Hirshberg, BBO #567234  
MORRISON MAHONEY, LLP  
250 Summer Street  
Boston, MA 02210-1181  
(617) 439-7500

Dated: 7/8/04

A TRUE COPY, ATTEST:



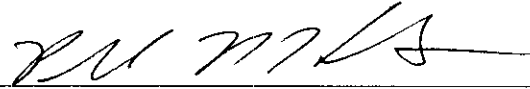
**CLERK/MAGISTRATE**



### CERTIFICATE OF SERVICE

I, Philip M. Hirshberg, do hereby certify that I have, this date, served the foregoing document upon Eldon D. Goodhue, Esq., Law Offices of Eldon D. Goodhue, P.C., 458 Newburyport Turnpike, Suite 3, Topsfield, MA 01983, by sending a copy of same by United States Certified Mail, Return Receipt Requested.

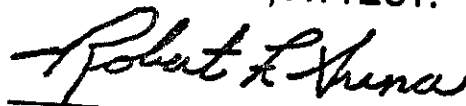
Dated: July 8, 2004



Philip M. Hirshberg BBO#567234  
MORRISON MAHONEY, LLP  
250 Summer Street  
Boston, MA 02210  
(617) 439-7500



A TRUE COPY, ATTEST:



CLERK MAGISTRATE  
CLERK MAGISTRATE

# MORRISON MAHONEY LLP

COUNSELLORS AT LAW

2001 250 SUMMER STREET 51  
BOSTON, MASSACHUSETTS 02210-1181  
617-439-7500  
FACSIMILE: 617-439-7590

Philip M. Hirshberg  
phone: (617) 737-8860  
fax: (617) 342-4929  
phirshberg@morrisonmahoney.com

MASSACHUSETTS	CONNECTICUT
BOSTON	HARTFORD
FALL RIVER	
SPRINGFIELD	NEW YORK
WORCESTER	NEW YORK
RHODE ISLAND	ENGLAND
PROVIDENCE	LONDON

July 8, 2004

Clerk for Civil Business  
First District Court of Essex  
65 Washington Street  
Salem, MA 01970

**Re: Claire Gagne v. J.C. Penney Company, Inc.**  
**Civil Action No. 0436CV395**

Dear Sir or Madam:

Enclosed for filing and docketing in the above-referenced matter, please find the following:

1. Notice of Filing of Notice of Removal.

Thank you for your cooperation in this matter.

Very truly yours,

  
Richard R. Eurich  
Philip M. Hirshberg

PMH/jdn  
Enclosures

cc: Eldon D. Goodhue, Esquire  
(by certified mail, return receipt requested)



**A TRUE COPY, ATTEST:**

  
**CLERK-MAGISTRATE**  
**CLERK/MAGISTRATE**

# MORRISON MAHONEY LLP

COUNSELLORS AT LAW

Philip M. Hirshberg  
phone: (617) 737-8860  
fax: (617) 342-4929  
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FACSIMILE: 617-439-7590

MASSACHUSETTS BOSTON FALL RIVER SPRINGFIELD WORCESTER	CONNECTICUT HARTFORD NEW YORK NEW YORK ENGLAND LONDON
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July 8, 2004

Clerk for Civil Business  
First District Court of Essex  
65 Washington Street  
Salem, MA 01970

**Re: Claire Gagne v. J.C. Penney Company, Inc.**  
**Civil Action No. 0436CV395**

Dear Sir or Madam:

Enclosed please find a copy of a Notice of Removal to the United States District Court in this matter, which was filed on July 6, 2004.

As per the Federal Rules, I am required to submit to the Federal Court certified copies of all records and pleadings in the State Court, as well as a certified copy of the docket sheet, within thirty (30) days of filing the Notice of Removal.

By this correspondence, I request such materials. To that end, kindly contact me at the above telephone number at your earliest convenience to inform me of the total cost for obtaining certified copies of the above-requested materials.

I appreciate your cooperation in this matter. If you have any questions or require any additional materials from this office, kindly feel free to call.

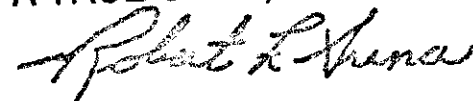
Very truly yours,

  
Richard R. Eurich  
Philip M. Hirshberg



PMH/jdn  
Enclosures  
cc: Eldon D. Goodhue, Esquire

A TRUE COPY, ATTEST:

  
CLERK-MAGISTRATE

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

04 11517 WGY

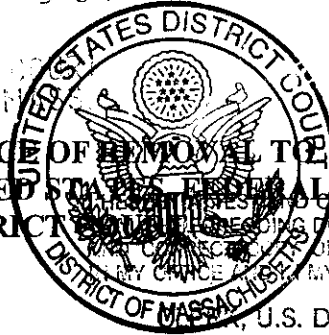
DOCKET NO:

CLAIRE GAGNE,  
Plaintiff,

v.

J.C. PENNEY COMPANY, INC.,  
Defendant.

NOTICE OF REMOVAL TO  
UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS



U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BY:

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Please take notice, pursuant to 28 U.S.C. Section 1446, that the defendant as named above, J.C. Penney Company, Inc., respectfully petitions this Court for removal of the above-captioned action, from the First District Court of Essex County (Salem District Court) of the Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts. The grounds for removal are as follows:

1. On or about April 16, 2004, the above plaintiff filed a Complaint against the above defendant, J.C. Penney Company, Inc., in the Commonwealth of Massachusetts, First District Court of Essex County. A true and accurate copy of said Summons and Complaint is attached hereto as Exhibit "A." Plaintiff served a copy of her Summons and Complaint upon the defendant J.C. Penney Company, Inc., on June 7, 2004.<sup>1</sup>

2. This civil action is pending in Essex County Massachusetts, and under 28 U.S.C. §§101 and 1441(a), the United States District Court for the District of Massachusetts is the proper forum for removal.

<sup>1</sup>In filing this Notice of Removal, the defendant does not waive any defenses with regard to service of process or the adequacy of process.

A TRUE COPY, ATTEST:

CLERK-MAGISTRATE



3. The present action is a civil action in which this Court has diversity jurisdiction pursuant to 28 U.S.C. §1332, and may be removed to this Court pursuant to 28 U.S.C. §1446.

4. Although the plaintiff has stated as damages an amount less than \$75,000 in her state court "Statement of Damages," attached hereto as Exhibit "B," it is the defendant's position in seeking removal herein that the amount in controversy would exceed \$75,000, based upon the nature of plaintiff's personal injury claims. See e.g. DeAguilar v. Boeing Co., 47 F. 3d 1414 (5<sup>th</sup> Cir. 1995). Therefore, plaintiff states that the amount in controversy meets the statutory requirement.

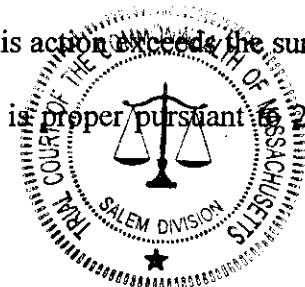
5. Based upon the allegations in plaintiff's Complaint, the plaintiff is a resident of the Commonwealth of Massachusetts, Essex County.

6. Plaintiff alleges that the defendant, J.C. Penney Company, Inc., is a Delaware corporation with a principal place of business in the State of Texas.

7. The defendant is neither a resident of the Commonwealth of Massachusetts nor has a principal place of business in Massachusetts.

8. This Notice of Removal has been filed within thirty (30) days of service of the Complaint upon the defendant, and thus has been filed in a timely manner pursuant to U.S.C. §1446.

9. Because complete diversity of citizenship exists between plaintiff and defendant, and as defendant takes the position that the amount in controversy in this action exceeds the sum of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), removal is proper pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1446.



A TRUE COPY, ATTEST:

*[Handwritten Signature]*

CLERK-MAGISTRATE

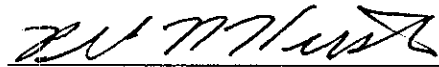
10. Written notice of this motion will be given to the plaintiff promptly after the filing of this motion.

11. The defendant will file a notice of the filing of this Notice of Removal and a copy of this Notice of Removal with the Clerk of the First District Court of Essex County for the Commonwealth of Massachusetts.

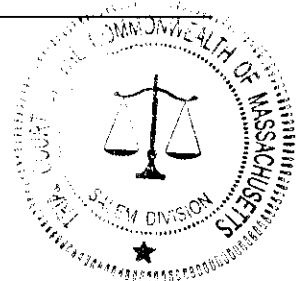
12. Pursuant to Local Rule 81.1(A), the defendant shall request of the Clerk of the Court for the First District Court of Essex County, certified or attested copies of all records and proceedings in the state court and certified or attested copies of all docket entries therein, and shall file the same with this Court within thirty (30) days after the filing of this Notice of Removal.

WHEREFORE, for the foregoing reasons, the defendant J.C. Penney Company, Inc. respectfully requests that the above-captioned matter pending in the First District Court of Essex County, Massachusetts be removed and that this Court take jurisdiction for trial and determination.

The Defendant,  
J.C. Penney Company, Inc.  
By its attorneys,



Richard R. Eurich, BBO #156600  
Philip M. Hirshberg, BBO #567234  
MORRISON MAHONEY, LLP  
250 Summer Street  
Boston, MA 02210-1181  
(617) 439-7500



Dated: 7/6/04

A TRUE COPY, ATTEST:



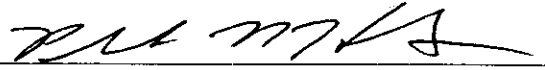
CLERK-MAGISTRATE



**CERTIFICATE OF SERVICE**

I, Philip M. Hirshberg, do hereby certify that I have, this date, served the foregoing document, by certified mail, return receipt requested to Eldon D. Goodhue, Esq., Law Offices of Eldon D. Goodhue, P.C., 458 Newburyport Turnpike, Suite 3, Topsfield, MA 01983.

Dated: July 6, 2004



Philip M. Hirshberg BBO#567234  
MORRISON MAHONEY, LLP  
250 Summer Street  
Boston, MA 02210  
(617) 439-7500



A TRUE COPY, ATTEST:

  
CLERK-MAGISTRATE

08/15/2004 14:52 972-411133

JCP LEGAL DEPT

PAGE 04/22

## COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

DISTRICT COURT  
SALEM DIVISION  
C.A. NO.CLAIRE GAGNE,  
Plaintiff

V.

J.C. PENNEY COMPANY INC.,  
Defendant

COMPLAINT

NOW comes the Plaintiff, Claire Gagne, and she complains of the Defendant and alleges the following as causes of action:

COUNT ONE

1. The Plaintiff, Claire Gagne, is domiciled at 15 Heritage Drive, Apt. 31, Salem, Essex County, Massachusetts.

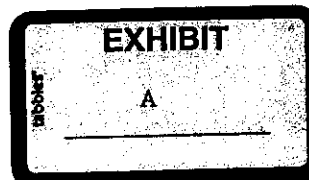
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2. The Defendant, J.C. Penney Company Inc., is a Delaware Corporation with a principal place of business at 6501 Legacy Drive, Plano, Texas.

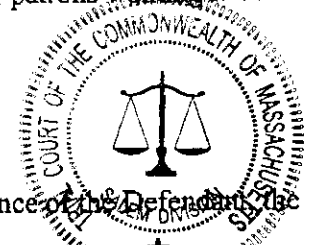
CLERK-MAGISTRATE

3. The Defendant, J.C. Penney Company Inc., is subject to personal jurisdiction in this Commonwealth under Massachusetts General Laws, Chapter 223A, Section 3.

LAW OFFICES OF  
ELDON D. GOODHUE P.C.  
455 NEWBURYPORT  
TURNPIKE  
TOPSFIELD,  
MASSACHUSETTS  
01963



4. On or about December 29, 2002, the Plaintiff, Claire Gagne, was a patron of J.C. Penney Co. Inc., located at 210 Andover Street, Peabody, Essex County, Massachusetts.
5. On or about December 29, 2002, the Defendant, J.C. Penney Company Inc., negligently failed to keep their premises safe for patrons, and use reasonable care in allowing a stocking rack to remain in the middle of an aisle in the Womens Department of their store, after the store was open for business.
6. The stocking rack, aforesaid mentioned, is an oversized rack at the bottom, and presented an unreasonably dangerous tripping hazard for patrons walking in the aisle.
7. As a direct and proximate result of the aforesaid negligence of the Defendant, the Plaintiff tripped and fell over the stocking rack, causing severe personal injury to the Plaintiff.
8. As a direct and proximate result of the aforesaid negligence of the Defendant, J.C. Penney Co. Inc., the Plaintiff, Claire Gagne, has incurred great pain and suffering and mental anguish, all to the Plaintiff's damage.
9. As a direct and proximate result of the aforesaid negligence of the Defendant, and the aforesaid injuries of the Plaintiff, Claire Gagne, the Plaintiff was placed under



A TRUE COPY, ATTEST:

CLERK-MAGISTRATE

the care of a physician, has incurred medical expenses, and will continue to incur medical expenses.

WHEREFORE, the Plaintiff, Claire Gagne, prays for judgment against the Defendant, J.C. Penney Co. Inc., together with interest and the costs of this action, and for such other further relief as the Court may deem proper.

COUNT TWO

10. The Plaintiff, Claire Gagne, repeats, reavers and realleges the allegations contained in Paragraphs 1 through 9 above, and incorporates them herein by reference.

11. On or about December 29, 2002, the Defendant, J.C. Penney Co. Inc., negligently failed to warn the Plaintiff and others of the dangerous tripping hazard existing on the isle where Plaintiff was injured.

A TRUE COPY, ATTEST.

12. As a direct and proximate result of the aforesaid negligent failure of the Defendant, J.C. Penney Co. Inc., to warn the Plaintiff, Claire Gagne, the Plaintiff has incurred great pain and suffering and mental anguish, all to the Plaintiff's damage.

13. As a direct and proximate result of the aforesaid negligent failure to warn of the Defendant, J.C. Penney Co. Inc., and the aforesaid injuries of the Plaintiff, Claire

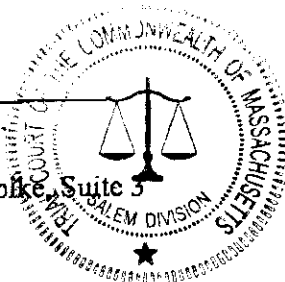
Gagne, the Plaintiff, was placed under the care of a physician, has incurred medical expenses, and will continue to incur medical expenses.

WHEREFORE, the Plaintiff, Claire Gagne, prays for judgment against the Defendant, J.C. Penney Co. Inc., together with interest and the costs of this action, and for such other further relief as the Court may deem proper.

Dated: April 13, 2004

For the Plaintiff,  
Claire Gagne,  
By her attorneys,  
Law Offices of Eldon D. Goodhue, PC

Eldon D. Goodhue, Esq.  
B.B.O. #201520  
458 Newburyport Turnpike, Suite 3  
Topsfield, MA 01983  
(978) 887-2000



A TRUE COPY, ATTEST:

*[Signature]*  
CLERK-MAGISTRATE

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JCP LEGAL DEPT

PAGE 03/22

Form DCM - 13

Commonwealth of Massachusetts  
District Courts of Massachusetts

ESSEX, ss

FIRST DISTRICT COURT OF ESSEX  
65 Washington Street, Salem, MA

CLAIRE GAGNE,  
Plaintiff  
V.  
J.C. PENNEY COMPANY INC.,  
Defendant

Civil Action No. 0436CV395**SUMMONS**

(Rule 4)

To defendant JC Penney Company Inc. of CT Corporation System  
c/o Resident Agent, 101 Federal Street, Boston, MA  
(name) (address)

You are hereby summoned and required to serve upon Eldon D. Goodhue, Esq. plaintiff's attorney), whose address is 458 Newburyport Tpke, #3 Topsfield, MA, a copy of your answer to the complaint which is herewith served upon you, within 20 days after service of this summons, exclusive of the day of service. You are also required to file your answer to the complaint in the office of the Clerk of this court either before service upon plaintiff's attorney), or within 5 days thereafter. If you fail to meet the above requirements, judgment by default may be rendered against you for the relief demanded in the complaint. You need not appear personally in court to answer the complaint.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will be barred from making such claim in any other action.

WITNESS Samuel E. Zoll, Presiding Justice, on 5/20/04  
(date)

(SEAL)

*Robert A. Verna*  
CLERK/MAGISTRATE

- Note: (1) When more than one defendant is involved, the names of all defendants should appear in the action. If a separate summons is used for each defendant, each should be addressed to the particular defendant.  
(2) The number assigned to the complaint by the Clerk at commencement of the action should be affixed to this summons before it is served.

**RETURN OF SERVICE**

On

(date of service)

I served a copy of the within summons, together with a copy of the complaint in this action, upon the within named defendant, in the following manner (see Rule 4 (f)).

A TRUE COPY, ATTEST

true copy Attest

6/7/04

(signature)

CLERK/MAGISTRATE

(address)

- Note: (1) The person serving the process shall make proof of service thereof in writing to the court and to the party or his attorney, as the case may be, who has requested such service. Proof of service shall be made promptly and in any event within the same time during which the person served must respond to the process Rule 4 (f).  
(2) Please place date you make service on defendant in the box on the copy served on the defendant, on the original returned to the court, and on the copy returned to the person requesting service or his attorney.  
(3) If service is made at the last and usual place of abode, the officer shall forthwith mail first class a copy of the summons to such last and usual place of abode, and shall set forth in the return the date of mailing and the address to which the summons was sent. (G.L. c. 223, sec. 31).